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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,105	02/19/1998	David B Kay	ORTHO-A-CIP-PCT.US	4870
7590 08/11/2004			EXAMINER	
Hudak & Shunk 2020 FRONT STREET, SUITE 307 CUYAHOGA FALLS, OH 44221-3256			WOO, JULIAN W	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 08/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

YW

<b>Advisory Action</b>	Application No. 10/089,105	Applicant(s) KAY, DAVID B	
	Examiner Julian W. Woo	Art Unit 3731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 22-27, 29, and 54.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Julian W. Woo*  
Julian W. Woo  
Primary Examiner  
Art Unit: 3731

Advisory Action Continuation Sheet: 7. Continued.

Claims 22-27, 29, and 54 would be rejected under 35 U.S.C. 103(a) as being unpatentable over DeCaro (4,762,453) in view of Limpert (2,033,039). DeCaro discloses the invention substantially as claimed. DeCaro discloses, in the figures and in col. 2, line 66 to col. 3, line 38, a tissue anchor and a method of making the anchor, where the anchor comprises a rigid elongate member (10) having an open helical structure, a first end having an insertion tip (31), and a second end having a modular attachment head (12); where the elongate member comprises spring steel, where the modular head includes a hexagonal recess (16), where the elongate member includes a seat (3) that is ring that is less than a complete circle (i.e., a partial helix gripping the modular head) and a complete circle (i.e., a complete helix also gripping the modular head), where the ring has the same outer diameter as the open helical structure, and where the modular head includes an opening (19, in fig. 9). However, DeCaro does not disclose as claimed the dimensions of the open, helical structure. Nevertheless, DeCaro discloses that the structure can be made in "a number of configurations" (see col. 1, lines 58 and 59). Thus, it would have been a matter of design choice to dimension the structure as claimed. The dimensions can be chosen according to the intended use of the anchor. Also, DeCaro does not disclose that the spring steel material of the helical structure is surgical grade or stainless. DeCaro does not disclose a modular attachment head that is substantially the same size or smaller than the outer diameter of the helical structure, and that the modular attachment head has an opening. Nevertheless, it would have been obvious to one having ordinary skill in the art at the

Art Unit: 3731

time the invention was made, to apply surgical grade or stainless steel to the anchor of DeCaro. Such a steel not only possesses mechanical strength, it is corrosion-resistant and hence, biocompatible. Limpert teaches a modular attachment head that is substantially the same size or smaller than the outer diameter of the helical structure, and that the modular attachment head has an opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Limpert, to modify the head of DeCaro, so that the modular head is substantially the same size or smaller than the outer diameter of the helical structure, and that the modular attachment head has an opening. Such modifications would allow the anchor of DeCaro to be driven with a rotating tool, such that the torque and insertion force are directed over the helical structure without affecting the surrounding tissue or structure around the anchor.